

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. PETER W. HALL,
Circuit Judges.

Zhi Feng Chen,

Petitioner,

v.

No. 03-40387-ag
NAC

Alberto R. Gonzales,¹ United States Attorney General,

Respondents.

FOR PETITIONER: Karen Jaffe, New York, New York.

FOR RESPONDENT: William J. Leone, United States Attorney, Mark S. Pestal,
Assistant United States Attorney, Denver, Colorado.

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as a respondent in this case.

1 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
3 petition for review is DENIED.

4 Zhi Feng Chen, a native and citizen of the People’s Republic of China, seeks review of an
5 August 6, 2003 order of the BIA summarily affirming the November 8, 2001 decision of
6 immigration judge (“IJ”) Brigitte Laforest denying Chen’s applications for asylum, withholding
7 of removal, and relief under the Convention Against Torture (“CAT”). *In re Zhi Feng Chen*, No.
8 A77 657 953 (B.I.A. August 6, 2003), *aff’g* No. A73 652 754 (Immig. Ct. N.Y. City November
9 8, 2001). We assume the parties’ familiarity with the underlying facts and procedural history of
10 the case.

11 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an
12 opinion, *see* 8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency
13 determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S.*
14 *Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency’s factual
15 findings, including adverse credibility determinations, under the substantial evidence standard,
16 treating them as “conclusive unless any reasonable adjudicator would be compelled to conclude
17 to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 &
18 n.7 (2d Cir. 2004).

19 Here, the IJ reasonably determined that Chen’s inconsistent testimony, his inability to say
20 how old his pregnant girlfriend was when she was too young to marry, his failure to adequately
21 corroborate his claim fatally undermined his credibility. *See Secaida-Rosales v. INS*, 331 F.3d
22 299, 308-09 (2d Cir. 2003) (holding that in order to support an adverse credibility finding, an

1 inconsistency must be substantial when measured against the record as a whole); *Xiao Ji Chen*,
2 434 F.3d at 164 (holding that failure to corroborate testimony may also bear on credibility where
3 the absence of corroboration in general makes an applicant unable to rehabilitate testimony that
4 has already been called into question).

5 The IJ's adverse credibility determination is thus substantially supported as a whole.
6 Because Chen has failed to challenge the IJ's denial of withholding of removal or CAT relief
7 before this Court, those arguments are considered waived. *Yueqing Zhang v. Gonzales*, 426 F.3d
8 540, 542 n.1, 546 n.7 (2d Cir. 2005).

9 _____For the foregoing reasons, the petition for review is DENIED. Having completed our
10 review, any stay of removal that the Court previously granted in this petition is VACATED, and
11 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
12 request for oral argument in this petition is DENIED in accordance with Federal Rule of
13 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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17 FOR THE COURT:
18 Roseann B. MacKechnie, Clerk

19 By: _____
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